IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/04/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION NO.965 OF 2003
AND
CRL.M.P.NO.373 OF 2003.

Mrs.R.Kala. ... Petitioner

-Vs-

Mrs.Usha Sampath ... Respondent

The above Criminal Original Petition has been preferred under Section 482 of Cr.P.C as stated therein.

!For Petitioner: M/s.Usha Raman.

^For Respondent: Mr.A.Raghunathan.

:O R D E R

The above Criminal Original Petition has been filed by the petitioner praying to quash the proceedings in C.C.No.1149 of 2002 on the file of the Court of XVIII Metropolitan Magistrate, Saidapet, Chennai.

2. On a perusal of the materials placed on record, it comes to be known that the respondent herein has filed a private complaint against the petitioner before the court of XVIII Metropolitan Magistrate, Saidapet, Chennai, under sections 138 and 142 of the Negotiable Instruments Act on averments that the petitioner has borrowed a sum of Rs.1,75,000/- for her business development; that for discharging the liability, the petitioner issued three cheques dated 5.7.2001 respectively for a sum of Rs.1,00,000/-, Rs.50,000/- and Rs.25,000/- in favour of the respondent; that when she presented the above said cheques in Nedunkadi Bank Ltd.,Mylapore Branch, on 5.7.2001, they were dishonoured on the same day with an endorsement "Exceeds arrangements"; that at the request of the petitioner, the respondent again represented the 3 cheques on 27.11.2001 for collection, but again they were returned on the same day with an endorsement "Accounts called up"; that the respondent sent a lawyer's notice dated 10.12.2001 and the petitioner acknowledged the receipt of the notice, but she did not come forward to settle the cheques amount; that the learned XIII Metropolitan Magistrate, Saidapet has taken on file the above complaint in C.C.No.1149 of 2002.

3. Now the petitioner has come forward with this Criminal Original Petition praying to quash the proceedings in C.C.No.1149 of 2002 on the file of the Court of XVII Metropolitan Magistrate, Saidapet, Chennai on grounds that the cause of action for filing the present complaint has been lapsed since the period of one month after service of notices dated 11.7.2001 on the petitioner/accused had expired at the time of taking cognizance of the offence alleged; that the respondent/ complainant issued 2nd statutory notice u/s 138 of the Negotiable Instruments Act on 10.12.201 after representing the cheques, which were the subject matter of earlier statutory notice dated 11.7.2001; that in case of cheque dishonour, the cause of action arises only once; that Section 138(c) r/w 142(b) envisages only one cause of action in respect of one and the same cheque; that since the respondent/complainant has forfeited her right to again present the cheques as such the complaint is barred by time.

4. In the counter affidavit filed by the respondent besides opposing the prayer for quashing the proceedings, she would submit that the petitioner places reliance upon a notice issued under date 11.7.2002 said to have been issued by Mr.S.Dhasaiya, Advocate purportedly on her behalf and that no such notice was sent on her instructions; that in the complaint there is no reference at all much less the notice dated 11.7.2001, was addressed to the petitioner following the receipt of the dishonoured cheques on 7.7.2001 and it is clearly averred in the complaint that the notice issued was on 10.12.2001 after the return of the cheques on 27.11.2001 following the representation of the cheques as per the request of the petitioner; that the notice dated 10.1 2.2001 is the only statutory notice sent to the petitioner; that the notice alleged to have been sent on 11.7.2001 and now relied upon by the petitioner is her own creation; that to the statutory notice dated 10.12.2001, the respondent sent a reply on 19.12.2001 and that the reply notice is eloquently silent about any earlier notice having been sent to her on behalf of the petitioner and that the cause of action for the present complaint arose for the first time on the expiry of the fifteen days from the date of receipt of the statutory notice dated 10.12.2001 and the present complaint has been lodged within 4 5 days thereof; that in any event, the question whether there was an earlier notice or not could be decided only by the trial Court; that the petitioner is trying to protract the proceedings against her somehow or other and on such averments she would pray to dismiss the above Criminal Original Petition.

5. During arguments, the learned counsel appearing on behalf of the petitioner would only lay emphasis on the factual position of the case as put up in the above criminal original petition and would seek for the relief extracted supra. But, the petitioner in the grounds of the petition would submit a Full Bench judgment of the Kerala High Court delivered in M/S.S.K.D.LAKSHMANAN FIREWORKS INDUSTRIES AND ANOTHER vs. K.V.SIVARAMA KRISHNAN AND ANOTHER reported in 1995 Criminal Law Journal 1384 and would submit that only for the first dishonour and not for the subsequent dishonour, can a prosecution under Section 138 of the Negotiable Instruments Act could be instituted as per Section 138(c) r/w.142(b) which envisages only one cause of action in respect of one and the same cheque.

6. The learned counsel for the petitioner would also cite another judgment of the Honourable Apex Court delivered in SADANANDAN BHADRAN vs. MADHAVAN SUNIL KUMAR reported in AIR 1998 SC 3043 wherein it has been held:

"A cheque can be presented any number of times during the period of its validity by payee. On each presentation of the cheque and its dishonour, a fresh right - and not cause of action - accrues in his favour. He may, therefore, without taking pre-emptory action in exercise of his such right under Cl.(b) of S.138, go on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque. But, once he gives a notice under Cl.(b) of S.138 he forfeits such right for in case of failure of the drawer to pay the money within the stipulated time he would be liable for the offence and the cause of action for filing the complaint will arise. Needless to say, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of fifteen days from the date of the receipt of the notice by the drawer, expires."

"Consequent upon the failure of the drawer to pay the money within the period of 15 days as envisaged under Cl.(c) of the proviso to S.138 , the liability of the drawer for being prosecuted for the offence he has committed arises, and the period of one month for filing the complaint under S.142 is to be reckoned accordingly. The combined reading of the above two sections of the Act leaves no room for doubt that cause of action within the meaning of S.142 arises and can arise only once."

7. On the other hand, the learned counsel appearing on behalf of the respondent, during his arguments, would also cite a judgment of the Honourable Apex Court delivered in SMT.CHAND DHAWAN vs. JAWAHAR LAL AND OTHERS reported in AIR 1992 SC 1379 wherein it has been held:

"The High Court can exercise its inherent jurisdiction of quashing a criminal proceeding only when the allegations made in the complaint do not constitute an offence or that the exercise of the power is necessary either to prevent the abuse of the process of the court or otherwise to secure the ends of justice. No inflexible guidelines or rigid formula can be set out and it depends upon the facts and circumstances of each case wherein such power should be exercised. When the allegations in the complaint prima facie constitute the offence against any or all of the accused in the absence of materials on record to show that the continuance of the proceedings would be an abuse of the process of the court or would defeat the ends of justice, the High Court would not be justified in quashing the complaint."

8. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, the short question that is to be answered in the case in hand is ` whether in a cheque bounce case on account of insufficiecy of funds, as contemplated under Sections 138 to 142 of the Negotiable Instruments Act, the payee or the holder of he cheque is entitled to exercise his right to proceed against the drawer on a second presentment of the cheque and bounced for want of sufficient funds in the bank so as to honour the cheque in spite of having already sent the

same for collection and dishonoured for the reason of insufficiency of funds?'

9. So far as Section 138 of the Negotiable Instruments Act is concerned, on presentment of the cheque, as contemplated under Section 138(a), in accordance with Section 138(b), the payee or the holder in due course of the cheque must make a demand for the payment of the cheque amount by issuing a notice in writing to the drawer within thirty days of the receipt of information from the bank regarding the return of the cheque as unpaid. On such compliance being done and in spite of such notice issued, if the drawer fails to make the payment of the said amount to the payee or the holder in due course within 15 days of the receipt of the said notice as it is required under Section 138 (c) of the Act, the cause of action would arise.

10. If the above requirements are not complied with, within one month from the date on which the cause of action has arisen under Section 138(c), the complaint has to be lodged before the competent court of law as stipulated under Section 142(b) of the Act.

11. These are the relevant provisions of law that are to be taken care of while filing a complaint on dishonour of cheques for prosecution of the drawer under Section 138 of the Negotiable Instruments Act. The question that is to be decided in the case in hand is `in spite of the cheques having been presented earlier once and dishonoured for the reason of insufficiency of funds, whether issuing the notice contemplated under Section 138(b) of the Act on a second presentment of the same cheque, would a second cause of action arise'?

12. In this case, the petitioner would allege that on the first presentment of the cheques before the Bank on 5.7.2001, they were dishonoured with an endorsement "exceeds arrangements" based on which the respondent had also issued notices dated 11.7.2001 on all the three bounced cheques as contemplated under Section 138(b) of the Negotiable Instruments Act and therefore the cause of action had arisen from the date on which the 15 days time contemplated therein lapsed from the date of receipt of the said notice by the drawer and thereafter within one month, the respondent should have come forward to file the complaint before the Magistrate concerned in compliance of Section 142(b) of the Negotiable Instruments Act and therefore a second cause of action would not arise as the respondent has done in the case in hand, on a re-presentment of all the three cheques again on 27.11.2001 and issuing a second notice on 10.12.2001 which have absolutely no legal backing and hence would seek to quash the pro ceeding initiated by the respondent and taken on file by the Court of XVIII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.1149 of 2002.

13. The respondent has taken the stand that he did not issue the notice dated 11.7.2001 at all to the petitioner and it has not been issued on her instructions and therefore the said notice has no bearing on the case registered based on the notice dated 10.12.2001 on account of the three cheques having been bounced and returned unpaid on presentment of the same on 27.11.2001 and hence would seek to dismiss the above criminal original

petition.

14. Whether the notice has been issued earlier on the instructions of the petitioner as it is alleged on the part of the petitioner herein could be decided once it is ascertained whether the cheque had already been sent for collection and in the case in hand there is no denying of the fact by the respondent that the cheques were earlier sent for collection on 5.7.2001 and therefore the notice issued consequently on 11.7.2001 could only be true and the respondent cannot take up the defence that in spite of having sent the cheque for collection and the same having been returned dishonoured for the insufficiency of funds on 5.7.2001, the notice dated 11.7.2001 was not issued on her instructions and this plea has been taken by the respondent only to avoid the cause of action that arose requiring compliance particularly as contemplated under Sections 138(b),(c) and 142(b) of the Negotiable Instruments Act which would follow. Further, just for the simple reason that the respondent has taken up the defence that she has not issued any notice, the legal obligation would not get either extinguished or a second opportunity is given under law particularly as given expression by the judgments of the Full Bench of the Kerala High Court and that of the Honourable Apex Court as brought forth on the part of the petitioner above and giving effect to all these legalities, the only decision that could be arrived at in the above criminal original petition is that no second cause of action will run since the respondent has already exhausted or allowed to lapse the time permitted by law in filing the complaint within such time particularly as contemplated under Sections138(b) and 142(b) of the Act and therefore this Court is left with no option but to quash the proceedings pending on the file of the Court of XVIII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.1149 of 2002 initiated by the respondent on the second presentment and dishonour of the cheques on 27.11.2001 and followed by the notice dated 10.12.2001 which are absolutely bereft of any effect or legal consequence and hence the following order:

In result,
(i)the above criminal original petition succeeds and the same is allowed.
(ii)The proceedings in C.C.No.1149 of 2002 pending on the file of the Court of XVIII Metropolitan Magistrate, Saidapet, Chennai are hereby quashed.
Consequently, Crl.M.P.NO.373 of 2003 is also dismissed.
11.4.2003.
Index: Yes
Internet: Yes
Rao

To

The XVIII Metropolitan Magistrate,
Saidapet,
Chennai-15.